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DIS Registry
81-777/7

CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

16 NOV 1981

DD/A Registry
81-0300/15

Mr. Steven Garfinkel
Director, Information Security
Oversight Office (Z)
General Services Administration
18th & F Streets, N.W.
Washington, D.C. 20405

Dear Mr. Garfinkel:

In response to your 16 October 1981 letter to the Director of the Central Intelligence Agency, forwarded herewith are our comments on your draft of a proposed new Executive order to replace E.O. 12065.

If you have any question regarding these comments, please feel free to contact me or my Director of Information Services, [REDACTED]
[REDACTED] has coordination responsibilities in the Agency for the Executive Order and can be reached on [REDACTED]

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/s/
Harry E. Fitzwater
Deputy Director
for
Administration

Enclosure

COMMENTS ON ISOO DRAFT OF EXECUTIVE ORDER

A. Page 8, Section 1-303

Change to read "Unauthorized disclosure of foreign government information, cryptologic information, or information relating to intelligence activities (including special activities), or intelligence sources or methods, is presumed to cause damage to the national security."

B. Page 9, Section 1-501

Change to read "At the time of original classification the following shall be shown on the face of all classified documents or clearly associated with other forms of classified information in a manner appropriate to the media involved:"

The parenthetical expression in 1-501(a) and 1-501(b) must appear in the main paragraph of 1-501 in order to cover all the markings. There are circumstances in which any U.S. marking at all would reveal a confidential relationship.

C. Page 16, Section 3-301

Move last sentence into a new Section 3-303.

D. Page 17, add Section 3-304

3-304. Guidelines and procedures established pursuant to this section shall be used by the Archivist of the United States and upon approval of the issuing authority, any Agency having custody of the information.

E. Page 17, Section 3-401(b)

Add "document or material containing the" in front of the word "information".

This increases the requirement for specificity by requesters under mandatory review. (The definition for "information" in Section 6-102 does not serve the same purpose.)

F. Page 20, Section 4-101

Add "Agency heads shall issue and maintain minimum investigative standards that must be satisfied before access to classified information is permitted."

Disparities and misunderstandings between agencies on what their standards are would be minimized if this Executive order required them to be stated.

G. Page 21, Section 4-201

Add after Director of Central Intelligence, "who shall ensure the establishment of common security, access, dissemination and control standards for such programs."

H. Page 21, Section 4-202

Delete entire section.

This requirement is unclear, unnecessary and burdensome.

I. Page 27, Section 5-402(a)

Change to read "knowingly, willfully or negligently, and without proper authority, disclose to unauthorized persons information properly classified under this Order or predecessor orders."

J. Page 28, Section 5-404

Change last sentence to read "Each shall ensure that the Director of the Information Security Oversight Office is periodically informed of violations under Section 5-402(a) or (b)."

K. Page 30, add Section 6-107

6-107. "Cryptology," for the purposes of this Order, means cryptography and communications security.

This definition reflects the current Intelligence Community understanding that the Director of Central Intelligence is responsible for the portion of intelligence sources and methods known as signals intelligence (SIGINT) and the Secretary of Defense is responsible for communications security (COMSEC) matters.

L. Page 30, add Section 6-108 and 6-109

6-108. "Unauthorized disclosure" includes either a communication or physical transfer of classified information to an unauthorized person.

6-109. "Unauthorized persons" are those who do not have both a current security clearance for access to the level of classified information involved and a specific, identifiable need for access to the information involved in order to accomplish an official and authorized government purpose.

Executive Registry

81-5384/3

OGC 81-10145
30 November 1981

STAT MEMORANDUM FOR: [redacted]
Special Assistant to DCI

STAT FROM: [redacted]
Office of General Counsel

SUBJECT: Current Status of Executive Order 12065 Revision

1. Enclosed for your review is the latest revised version of Executive Order 12065, "National Security Information." This proposed new executive order is primarily based on a draft prepared by an intelligence community group chaired by this Agency's General Counsel. This draft was circulated by the Information Security Oversight Office (ISOO) to the approximately thirty-five (35) executive branch agencies involved in the classification process. Comments from these agencies were to be provided to ISOO by 16 November 1981.

2. ISOO is presently reviewing the comments submitted by the various agencies, and will attempt to reasonably accommodate as many of these suggested revisions as possible. ISOO hopes to complete this review by the end of next week, at which time a "final" draft will be submitted to the National Security Council (NSC). Subject to a final and expeditious review by NSC, the new order will be presented to the President hopefully sometime next month.

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Attachment

L105

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cc all DD's.
HEF is going
to mention
to DD's.
C/S

E.O. 12065

1. Balancing test - emphasis on public's right to know.
2. Confidential - information whose unauthorized disclosure reasonably could be expected to cause identifiable damage to the national security.
3. Duration of classification - no longer than six years unless extended by an original Top Secret classification authority for periods up to 20 years. Classification of foreign government information may be extended up to 30 years.
4. Portion marking - required unless a waiver has been granted for specified classes of documents or information by the Director of the Information Security Oversight Office (ISOO).
5. Systematic review - required for permanently valuable documents.
6. "Mosaic" or "aggregate" approach to classification not mentioned.
7. Unauthorized disclosure of foreign government information or the identity of a foreign confidential source is presumed to cause at least identifiable damage to the national security.
8. Third agency rule mentioned only in implementing directive.

Draft of New Executive Order

1. No balancing test - emphasis on protection of national security information.
2. Confidential - information whose unauthorized disclosure reasonably could be expected to cause damage to the national security. The word identifiable has been dropped.
3. Duration of classification - as long as required by national security considerations.
4. Portion marking not mentioned.
5. Systematic review - optional, at discretion of agencies.
6. Information must be considered in the context of related information when making a classification determination.
7. Unauthorized disclosure of foreign government information or information relating to intelligence sources or methods is presumed to cause damage to the national security.
8. Third agency rule specifically included.

MAJOR POINTS OF INTEREST TO THE AGENCY THAT WERE
NOT INCLUDED IN THE ISOO DRAFT

1. "Matters whose disclosure might place the life or safety of an individual in jeopardy" is not listed as a criteria for classification.
2. The draft no longer spells out the DCI's authority to ensure the establishment of common security, access, dissemination and control standards for special access programs.